

# **Exhibit OMR3**

**Edell, Joseph**

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**From:** Andrew Weiss [aweiss@raklaw.com]  
**Sent:** Wednesday, September 07, 2011 11:58 AM  
**To:** McEldowney, Sean M.  
**Cc:** NeuroGrafix Team; NeuroGrafix WRF; LoCascio, Gregg F.; Gross, Brian N.; Nalevanko, Christopher R.; Edell, Joseph  
**Subject:** Re: NeuroGrafix v. Siemens

Sean:

The brief speaks for itself. Plaintiffs' Motion is being made pursuant to at least L.R. 7-18(c). Also, as mentioned in the brief, the issue was already addressed with the Court and the Court indicated it would "be up for" considering Plaintiffs' motion.

Andrew

On Sep 6, 2011, at 8:50 PM, McEldowney, Sean M. wrote:

Andrew,

As you know, Local Rule 7-18 allows motions for reconsideration "**only on the grounds**" of (a) a material difference in fact or law from that presented to the Court, (b) the emergence of new material facts or a change of law, or (c) a manifest showing of a failure to consider material facts presented to the Court before the original decision. C.D. Cal. L.R. 7-18. Filing a motion for reconsideration that is not based on one of those three grounds, and that instead impermissibly repeats oral or written arguments made previously, is sanctionable. *See MAI Sys. Corp. v. Walbert Enters., Inc.*, 116 F.3d 485 (9th Cir. 1997) (affirming the award of attorneys' fees for violating Local Rule 7.16 (now 7.18) because plaintiffs merely "repeated arguments made in the underlying motion" which "unnecessarily and unreasonably multiplied this litigation"); *Davidson v. City of Culver City*, 2004 WL 5361891 (C.D. Cal. 2004) (issuing "admonition" that "if Plaintiffs are under the impression that this Court will indulge endless motions for reconsideration that fail to satisfy one of the mandatory elements of Local Rule 7-18..., Plaintiffs should reconsider"), *aff'd*, 159 Fed. App'x 756 (9th Cir. 2005); *see also Martinis v. Barbanell*, 211 F.3d 1274 (9th Cir. 2000); *Weber v. Gorenfeld*, 8 F.3d 34 (9th Cir. 1993); *In re Dixie Farms Market*, 28 Fed. App'x 673 (9th Cir. 2002).

Plaintiffs' motion for reconsideration of the Court's claim construction order utterly fails to raise any fact or law that could support one of the three permissible reconsideration grounds under Local Rule 7-18. Indeed, Plaintiffs motion does not even facially purport to fall under one of those three categories, and the only arguments in Plaintiffs' motion are mere regurgitations of the arguments Plaintiffs made during claim construction.

If Plaintiffs do not contend their motion is based on one of the three permissible grounds identified in Local Rule 7-18, please immediately withdraw the motion so that we can avoid further time and resources responding to a motion that facially violates Local Rule 7-18. If Plaintiffs contend somehow -- although they failed to so state in their brief -- that the motion is based on one of the three permissible grounds, please immediately identify which ground (i.e., a, b, and/or c from Local Rule 7-18) and what fact or law Plaintiffs contend is materially different or new, or what fact Plaintiffs contend the Court manifestly ignored. If Plaintiffs pursue the motion without a proper basis under Local Rule 7-18, Siemens reserves the right to seek fees and costs for opposing the motion.

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